No. 17-647

IN THE

Supreme Court of the United States

ROSE MARY KNICK

Petitioner,

v.

TOWNSHIP OF SCOTT; CARL S. FERRARO, Individually and in his Official Capacity as Scott Township Code Enforcement Officer,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF AMICI CURIAE AARP AND AARP FOUNDATION IN SUPPORT OF PETITIONER URGING REVERSAL

Julie Nepveu*
William Alvarado Rivera
*Counsel of Record

AARP Foundation Litigation
601 E Street, NW
Washington, DC 20049
Tel.: (202) 434-2075
jnepveu@aarp.org
Counsel for Amici Curiae

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STATEMENT OF INTEREST[1]

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, AARP works to strengthen communities and advocate for what matters most to families, with a focus on health security, financial stability, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works to end senior poverty by helping vulnerable older adults build economic opportunity and social connectedness.

AARP and AARP Foundation litigate in the courts and file amicus briefs to address practices that threaten the financial security and well-being of older Americans. Amici in this regard support the Court's reconsideration of the *Williamson County* requirement that property owners exhaust state court remedies to ripen federal takings claims, and recommend that this doctrine be overturned. Courts have applied the doctrine in a formulaic and inconsistent manner, imposing costly state litigation burdens even where the alleged property taking shares none of the ripeness concerns inherent to the

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[1] Pursuant to the Court's Rule 37.6, amici state that this brief was not authored in whole or in part by any party or its counsel, and that no person other than amici, its members, or its counsel contributed any money that was intended to fund the preparation and submission of this brief. Pursuant to this Court's Rule 37.2(a), letters by both parties consenting to the filing of amicus briefs are on file with the Court.

administrative zoning disputes in *Williamson County*. As amici will show, a prominent example – of serious concern to older Americans – is the courts' imposition of costly and needless litigation burdens in cases where property owners allege that state tax authorities, following property tax foreclosure sales, have made final decisions to seize and retain sale proceeds far exceeding the owner's tax debt. *See, e.g., Wayside Church v. Van Buren Cnty*, 847 F.3d 812 (6th Cir. 2017). *Williamson County*'s imposition of state litigation burdens in this context poses a threat to the economic security of older Americans of modest means, especially, given their higher vulnerability to property tax foreclosure and lack of resources to fund needless state litigation to "ripen" their claims.

AARP and AARP Foundation have participated as amici curiae in the federal and state courts to address the problem of abusive property tax foreclosures as well as other practices depriving citizens of equity in their property. *See, e.g.*, Brief for AARP and AARP Foundation as Amici Curiae Supporting Petitioners, *Wayside Church v. Van Buren Cnty.*, 847 F.3d 812 (6th Cir.), *cert. denied*, 138 S. Ct. 380 (2017) (No. 17-88) (supporting appeal to Court of Appeals for the 6th Cir., and supporting petition for certiorari to the Supreme Court); AARP Amicus Brief in Support of Plaintiffs, *Coleman v. District of Columbia*, 306 F.R.D. 68 (D.D.C. 2015) (No. 13-1456), ECF 56; Order Granting Final Approval of Class Action Settlement Agreement, *Coleman* (No. 13-1456), ECF 70 (preliminary order approving class action settlement of claims alleging violation of Fifth Amendment Takings Clause for failure to return

surplus tax sale proceeds to former property owners); Brief Amicus Curiae of AARP, *Battisti v. Beaver Cnty. Tax Claim Bureau* (*In re Battisti*), 105 A.3d 76 (Pa. Commw. Ct. 2014) (No. 733 C.D. 2014) (protest of sheriff's sale to collect $6.30 in late fees charged without notice on 2008 taxes, plus costs, in violation of state procedures).

SUMMARY OF ARGUMENT

The Takings Clause preserves governmental power to regulate property, subject only to the dictates of "justice and fairness." *Andrus v. Allard*, 444 U.S. 51, 65 (1979) (quoting *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978). "The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness [ ] as it does from technical concepts of property law." *United States v. Fuller*, 409 U.S. 488, 490 (1973) (citing *United States v. Commodities Trading Corp.*, 339 U.S. 121, 124 (1950)). Congress created a federal forum for these and other constitutional claims through 42 U.S.C. § 1983 and 28 U.S.C. § 1331.

The Court in *Williamson County* recognized that where state and local governments have established administrative processes to determine the economic impact of zoning regulations and the calculation of proper compensation, it was premature to consider whether an unconstitutional taking without just compensation had occurred until plaintiff had allowed the process to run its course. There, the Court determined that plaintiff, among other things, had failed to avail itself of zoning variance possibilities

that might have reduced the negative impact on its property rights and have helped determine what compensation, if any, was owed. *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194-97 (1985).

The Court did not stop there, enunciating a general prudential requirement that federal courts should decline to exercise jurisdiction over Fifth Amendment takings claims until property owners first and finally exhaust their state court remedies in order to "ripen" those claims. *Id.*, at 194. Plaintiffs, to avoid this requirement, would have to prove there was no "'reasonable, certain and adequate provision for obtaining compensation' at the time of the taking." *Id.* (quoting *Cherokee Nation v. S. K. R. Co.*, 135 U.S. 641, 659 (1890)).

As Petitioner Knick demonstrates, this state litigation requirement, rather than helping ripen claims for federal court review, often serves to bar such review altogether, as plaintiffs face obstacles of procedural gamesmanship, waiver, preclusion, and unnecessary and prohibitive added cost. Pet'r's Br. on the Merits 24-27, 31-32. *Williamson County* also has been applied to categories of property takings unrelated to the case's zoning ordinance origins and not featuring the ripeness considerations that animated the opinion in that case. An unintended result is that the state litigation requirement has unnecessarily raised the cost of access to federal court for such claimants and has diminished those courts' role in adjudicating Fifth Amendment claims.

As amici will show, the application of *Williamson County* to state tax foreclosure cases illustrates the extremes to which courts have taken this doctrine. In these cases, courts have imposed this state litigation ripeness requirement to claims that are facially fit for review, state tax authorities already having taken final action to seize and retain property owners' sale proceeds exceeding their debts. *Rafaeli, LLC v. Wayne Cnty.*, No. 14-13958, 2015 U.S. Dist. LEXIS 72199, at *2 (E.D. Mich. June 4, 2015) (declining federal court jurisdiction even where Michigan law compelled tax authorities to both seize and retain surplus foreclosure sale proceeds). Courts also have imposed the requirement despite uncertainty that any additional state judicial or administrative remedial laws apply to this practice. *See, e.g., Wayside Church*, 847 F.3d at 823-24 ("We have neither certainty nor sound process here. Whether Michigan substantive law provides a remedy for the type of taking alleged here is hardly certain.") (Kethledge, J., dissenting). Finally, this is a circumstance where the added cost and delay imposed by the state litigation doctrine often will act as a total bar to federal court access, the affected property owners, by definition, being individuals and organizations unable to pay their property taxes.

ARGUMENT

I. THE *WILLIAMSON COUNTY* STATE LITIGATION RULE HAS IMPOSED COSTLY AND UNNECESSARY OBSTACLES TO FEDERAL COURT REVIEW OF FIFTH AMENDMENT TAKING CLAIMS

Congress enacted 42 U.S.C. § 1983 with the "inten[t] to provide a federal judicial forum for the redress of wrongful deprivations of property by persons acting under color of state law." *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 543 (1972). "The very purpose of [42 U.S.C.] § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights ...." *Mitchum v. Foster*, 407 U.S. 225, 242 (1972).

Although this was not foreseen, the *Williamson County* state litigation requirement, as applied, has impeded federal courts from fulfilling this critical role. Rather than acting to "ripen" claims to facilitate federal court review, 473 U.S. at 185, the doctrine's state litigation requirement has erected roadblocks of cost and delay not serving the intended purpose.

As Petitioner Knick observes, one striking example is where plaintiffs litigate the issues in state court as required by *Williamson County*, lose, and then find themselves barred from federal court review on the merits as a matter of res judicata or estoppel. *See, e.g., San Remo Hotel, L.P. v. City & Cnty. of San*

Francisco, 545 U.S. 323, 346-47 (2005); Pet'r's Br. on the Merits 24-27, 31-32 (listing examples).

Plaintiffs also may find themselves on a costly and self-defeating merry-go-round of litigation between federal and state court in removal cases. *See, e.g.*, *Koscielski v. City of Minneapolis*, 435 F.3d 898, 903 (8th Cir. 2006) (defendant removes case to federal court, which then dismisses the claim because it "lacks jurisdiction"); *Ohad Assocs., LLC v. Twp. of Marlboro*, No. 10-2183 (AET), 2011 U.S. Dist. LEXIS 8414, *3-4 (D.N.J. Jan. 28, 2011) (federal court accepts removal, denies plaintiff's request for remand back to state court, then dismisses for lack of exhaustion of state remedies); *Rau v. City of Garden Plain*, 76 F. Supp. 2d 1173, 1174 (D. Kan. 1999) (defendants remove case to federal court, which dismisses and remands back to state court).

Finally, plaintiffs may simply lose a war of attrition, courts expecting them to exhaust all possible state administrative and judicial avenues before reaching federal court. *See Evans v. Washington Cnty.*, No. CV-99-1356-ST, 1999 U.S. Dist. LEXIS 20036, at *17 (D. Or. Dec. 10, 1999) ("Nevertheless, the Ninth Circuit has repeatedly held that a plaintiff must seek any available state remedy, statutory procedure, or state constitutional claim before asserting a federal takings claim.").

As members of this Court have recognized, "the justifications for [*Williamson County*'s] state-litigation requirement are suspect, while its impact on takings plaintiffs is dramatic." *Arrigoni Enters., LLC*

v. Town of Durham, 136 S. Ct. 1409, 1409 (2016) (Thomas, J., joined by Kennedy, J., dissenting from denial of certiorari) (quoting *San Remo*, 545 U.S. at 352 (Rehnquist, C.J., joined by O'Connor, Kennedy, and Thomas, JJ., concurring). Amici submit that *Williamson County*'s application in the realm of Fifth Amendment challenges to tax foreclosure sales richly illustrates the foregoing—a case where the doctrine's justification is facially suspect (the acts of taking and refusal to compensate clearly final and ripe for review), and where the potential cost of litigating theoretical remedies in state court will often be fatal to the claim (older homeowners having lost the surplus equity needed to finance their basic needs).

II. THE PROPERTY TAX FORECLOSURE CASES ILLUSTRATE THE NEEDLESS ADDED BURDENS AND DELAY IMPOSED BY *WILLIAMSON COUNTY*

A. State Laws Permitting Seizure of Property Owners' Surplus Equity and the Example of *Wayside Church*

A "foreclosure by sale" typically involves "the surplus over the debt [being] refunded to the debtor[.]" *BFP v. Resolution Tr. Corp.*, 511 U.S. 531, 541 (1994). The practice of "strict foreclosure" in which "the borrower's entire interest in the property was forfeited, regardless of any accumulated equity" was generally abandoned as a remedy in America in the nineteenth century. *Id.* at 541.

Most state taxing authorities that foreclose on homes by sale of property follow this principle.[2] They return the excess proceeds obtained from a tax sale to the former property owner, after deducting taxes, interest, penalties, fees, and costs of collection. Federal law similarly returns the excess proceeds to the former owner. *See, e.g.*, *United States v. Rodgers*, 461 U.S. 677, 690-94 (1983) (forced sale to recover delinquent federal taxes under 26 U.S.C. § 7403 cannot extend beyond the property interest held by the delinquent taxpayer, and government may not ultimately collect, as satisfaction for the indebtedness owed to it, more than the value of the property interests that are actually liable for that debt).

However, there are a number of states that do not adhere to such "basic equitable principles of fairness." *Fuller*, 409 U.S. at 490. For example, the Michigan property tax foreclosure statute requires local governments to seize title to tax delinquent properties, sell the property, and keep all the proceeds—no matter how valuable the property or how small the tax debt. Mich. Comp. Laws § 211.78 (LexisNexis through 2018 Public Act 153); *Rafaeli, LLC v. Wayne Cnty.*, No. 14-13958, 2015 U.S. Dist. LEXIS 72199, at *2 (E.D. Mich. June 4, 2015). A number of other states also appear to require tax authorities to seize and retain all proceeds of tax

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[2] *See, e.g.*, Ala. Code § 40-10-28 (LexisNexis through 2018 Reg. Sess.); Fla. Stat. § 197.582 (LexisNexis through 2018 Reg. Sess.); Ga. Code Ann. § 48-4-5 (LexisNexis through 2017 Reg. Sess.).

foreclosure sales.[3] Additional states fail to affirmatively guarantee a property owner's right to surplus equity.[4]

The *Wayside Church* case is a window into how *Williamson County* is applied with excessive formalism to require costly state litigation to "ripen" claims even where (1) the plaintiff's claim challenging this practice clearly is ripe for review (tax authorities already having made final decisions to seize the proceeds and to refuse compensation), *see Horne v. Dep't of Agric.*, 569 U.S. 513, 526 n.6 (2013) ("[W]hether an alternative remedy exists does not affect the jurisdiction of the federal court" to hear an otherwise ripe takings claims); Pet'r's Br. on the Merits 38 n.14; (2) where it is uncertain that inverse condemnation statutes or other potential state avenues for relief will be deemed applicable to such state-authorized actions of the taxing authorities, and (3) where it is highly likely the defendant will win a war of attrition before the plaintiff reaches federal court, the affected property owners already being in dire financial straits.

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[3] Minn. Stat. § 280.29 (LexisNexis through ch. 102, 2018 Reg. Sess.); Mont. Code Ann. §§ 15-17-319, 322 (LexisNexis through Nov. 2017 Special Sess.); N.D. Cent. Code § 57-28-20 (LexisNexis through 2017 Reg. Sess.).

[4] *See, e.g.*, Colo. Rev. Stat. § § 39-11-136, 145 (LexisNexis through 1st Reg. and 1st Extraordinary Sess.); Idaho Code Ann. § 63-1006 (LexisNexis through 2018 Reg. Sess.); 35 Ill. Comp. Stat. 200/22-40.

Van Buren County in Michigan instituted a tax foreclosure proceeding to collect delinquent property taxes on three separate properties. 847 F.3d at 815. Plaintiff Wayside Church was deemed to owe $16,750 in delinquent property taxes, interest, penalties, and sale expenses. *Id.* Title to its property passed to the County before the sale by virtue of the foreclosure judgment. *Id.* The county treasurer then sold the church's property for $206,000. *Id.* The County netted surplus proceeds of $189,250, which it retained as required by law rather than returning the money to Wayside Church. *Id.*

An individual plaintiff in the same case who owned a separate property owed $25,000 in delinquent property taxes. *Id.* The County sold that property for $68,750, resulting in a surplus of $43,750, which, again, the County retained for public use. *Id.* A third individual plaintiff owned property that the County sold for $47,750 to collect delinquent property taxes in the amount of $5,900. *Id.* The County retained the surplus proceeds worth $41,850. *Id.*

Plaintiffs filed a class action lawsuit in federal district court alleging that the state's retention of the surplus sales proceeds violated the Takings Clause of the Fifth Amendment. Defendants moved to dismiss, alleging, among other things, that plaintiffs' claims were not ripe because they had failed to avail themselves of a "reasonable, certain, and adequate" remedy in state court as required by *Williamson County*. *Id.* at 818. The district court disagreed, concluding in part that plaintiffs' only recourse was through a proceeding in a special Claims Court, which

the district court found would be fruitless because that court lacked jurisdiction if there was an adequate remedy in the federal courts. *Id.* at 818-19.

On appeal, the Sixth Circuit disagreed with the district court, parsing Michigan statutes to conclude that plaintiffs could avoid Claims Court by pursing a monetary claim in state courts of general jurisdiction. However, the applicability of that statute, too, was so unclear that the court had to rest its interpretation in part on constitutional principles of avoidance: "Because the clearer reading of the relevant statutes allows Plaintiffs to bring their cases . . . in state court, and because this Court is required to read statutes to be constitutional if possible, we conclude that Plaintiffs have failed to establish that jurisdiction in federal court is proper because the state provided no 'reasonable, certain and adequate [procedures] at the time of the taking.' *Id.* at 822.

It is difficult to imagine a claim less in need of "ripening" prior to federal court review. Both the state's seizure of property, and its refusal to return it, were final acts committed by the state tax agency authorized by law to commit such acts. As stated by Judge Kethledge in his dissent,

> In this case the defendant Van Buren County took property worth $206,000 to satisfy a $16,750 debt, and then refused to refund any of the difference. In some legal precincts that sort of behavior is called theft. But under the Michigan General Property Tax Act,

> apparently, that behavior is called tax collection.

Id. at 823.

Moreover, as Judge Kethledge observed, the availability of any additional remedies under Michigan state law was theoretical at best:

> We have neither certainty nor sound process here. Whether Michigan substantive law provides a remedy for the type of taking alleged here is hardly certain. True, Michigan law provides a cause of action for so-called "inverse condemnations," in which the government takes a property interest without a formal exercise of eminent domain. [citations omitted.] And in adjudicating those claims the Michigan courts have recognized what they call "de facto" takings, for which "no exact formula" exists. *Id.* But the Michigan courts have not yet determined, as a matter of state law, whether a local government's appropriation of property pursuant to the taxing power generally, or to the General Property Tax Act in particular, is a taking to the extent the government takes property worth more than the amount of taxes owed.
>
> Perhaps the Michigan courts will recognize this kind of inverse-condemnation claim as viable . . . But it overstates matters to say the Michigan courts' recognition of this type of inverse-condemnation claim is "certain."

> Equally problematic is the jurisdictional uncertainty that awaits the plaintiffs in state court. When they file their inverse-condemnation claim there, they must choose between two courts: the state circuit court, which is a trial court of general jurisdiction, or the state court of claims, which (like its federal counterpart) has jurisdiction over monetary claims "against the state or any of its departments[.]" *See* M.C.L. §§ 600.605 (circuit court), 600.6419 (court of claims). But no matter which court the plaintiffs choose, they will face a strong argument that they chose wrongly.

Wayside, 847 F.3d at 823-24.

Thus, plaintiffs faced the very real possibility of discovering—after years of costly litigation not necessary to "ripen" their claims—that no other Michigan laws offered a remedy for this practice. The bottom line, as Judge Kethledge observed, is that such claims are appropriate for review in federal court in the first place:

> At this point one senses we have lost our constitutional bearings. The plaintiffs have asked us to adjudicate a claim arising under the federal Constitution, which is the most important type of claim that we can adjudicate. The claim itself is substantial: that, when a state takes fee simple to property in satisfaction of a tax obligation, the state effects a taking to the extent the property is worth more than the

> taxes and penalties owed . . . Congress has granted us jurisdiction over that claim. We have a strict duty to exercise that jurisdiction.

Id. at 824-25. Thus, federal courts can and should exercise their jurisdiction to adjudicate takings claims where property owners allege a plausible injury that gives them standing to assert that their claims are ripe. *See, e.g., Monroe v. Pape*, 365 U.S. 167, 183 (1961) ("The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."), *overruled on other grounds by Monell v. Dep't of Social Servs.*, 436 U.S. 658, 663 (1978).

Wayside Church is not the only example of tax foreclosure claims inappropriately becoming subject to the *Williamson County* state litigation requirement. In *Rafaeli*, property was sold for $24,500 pursuant to Michigan law to collect a mere $8.41 in unpaid taxes. *Rafaeli*, 2015 U.S. Dist. LEXIS at *7. The County retained the excess proceeds in the amount of $24,491.59, and the third-party purchaser who obtained the property at auction listed the property for sale at the price of $70,000. *Id.* at *7-8. The trial court dismissed, holding that it lacked subject matter jurisdiction because of *Williamson County*, despite two previous Supreme Court cases holding that the doctrine does not establish a jurisdictional bar. *See Horne*, 569 U.S. at 526 (doctrine merely prudential); *Stop the Beach Renourishment v. Fla. Dep't of Envtl. Protection*, 560 U.S. 702, 729 (2010) (same).

The *Rafaeli* case, having moved to state court in 2015, is continuing its journey through the Michigan state court system. *See, e.g.*, *Rafaeli, LLC v. Oakland Cnty.*, No. 330696, 2017 Mich. App. LEXIS 1704 (Mich. Ct. App. Oct. 24, 2017) (per curiam, unpublished); *Rafaeli, LLC v. Oakland Cnty.*, No. 156849 (Mich. request for leave to appeal filed Dec. 04, 2017). The Michigan Court of Appeals held that, because the court considered the foreclosure notice to have been sufficient under the Due Process Clause, there could not be, as a matter of law, any Fifth Amendment Takings claim. *See* 2017 Mich. App. LEXIS 1704, at *9-10. The Court of Appeals made no mention of the fact—considered quite important by the federal trial court in the initial action—that the state did not simply repossess delinquent taxes, nor delinquent taxes and a late-payment penalty with costs, but *the entire sale value of the property*. In order to have that central issue addressed, the plaintiffs in *Rafaeli* will have to exhaust their state-court remedies, wasting years and expending considerable money, and then return once more to federal court, at least three and a half years after filing their initial complaint on October 14, 2014. *See* Class Action Complaint, *Rafaeli*, 2015 U.S. Dist. LEXIS 72199, ECF 1.

B. The Burden Imposed by *Williamson County* in the Tax Foreclosure Context is Likely to Fall Disproportionately Upon the Most Vulnerable Homeowners

Home ownership is considered the lynchpin of economic well-being for older Americans. *See* Kermit Baker et al., *Housing America's Older Adults: Meeting the Needs of an Aging Population*, J. Ctr. for Hous. Stud. of Harv. Univ. 1 (2014) [hereinafter *Housing America's Older Adults*], http://bit.ly/1umYrKY. "Older Americans often use[ ] their home equity in retirement to finance health care, home maintenance, and other large expenses and as a safety net that could be used to meet unexpected needs." Lori Trawinski, *Nightmare on Main Street: Older Americans and the Mortgage Market Crisis*, AARP Pub. Pol'y Inst. 3 (July 2012), http://bit.ly/XLk7FC. "For most older people, the home is . . . their most valuable asset." *Id.*

It should not surprise us that older and low-income homeowners—who often have insufficient income to pay for their most basic necessities—are at high risk of losing their homes to aggressive tax foreclosure practices. John Rao, *The Other Foreclosure Crisis: Property Tax Lien Sales*, Nat'l Consumer Law Ctr. 5 (Jul. 2012) [hereinafter *The Other Foreclosure Crisis*], http://bit.lyWbHe62. "As the single largest item in most household budgets, housing costs directly affect day-to-day financial security as well as the ability to accrue wealth to draw upon later in life." *Housing America's Older Adults, supra,* at 1. Housing costs—including taxes,

insurance, maintenance, repairs, and utilities—typically consume a disproportionately large share of (the usually low- and fixed) income of older households. *See* William C. Apgar & Zhu Xiao Di, *Housing Wealth and Retirement Savings: Enhancing Financial Security for Older Americans*, J. Ctr. for Hous. Stud. of Harv. Univ. 16 (Sept. 2005), http://bit.ly/1WbHD8B.

Insufficient income to pay rising property taxes and other expenses is not the only systemic risk that make older homeowners more vulnerable to losing their property to tax foreclosures. For example, older people who do not owe a mortgage no longer enjoy the benefit of paying a portion of their taxes into an escrow account and having those payments automatically transmitted to the taxing authority. Managing one's tax payments without the assistance of a mortgage servicer thus adds greater risk for older homeowners who own their homes outright and risk losing their entire investment if they miss a tax payment. Similarly, most homeowners with a subprime or reverse mortgage do not have the benefit of escrow accounts and thus have a disproportionately greater risk of losing their home to a tax foreclosure. *The Other Foreclosure Crisis, supra*, at 5.

Another common feature of property tax regimes—lump sum billing—also increases the risk of loss for older and low-income homeowners, particularly those whose income is fixed and may find it difficult to set aside sufficient amounts to cover a large annual tax bill. Only 59 percent of Americans in 2017 said that they could come up with $400 in cash

to survive an income shock, while the rest would need to borrow money, take out payday loans, use credit cards, or take similar measures. Bd. of Governors of the Fed. Reserve, *Report on the Economic Well-Being of U.S. Households in 2017* 21 (2018), https://bit.ly/2LoT78j.

Paying taxes in a timely fashion also may be particularly difficult for older people who may be experiencing increasingly serious health conditions or disability, diminished capacity to manage finances, cognitive decline, or dementia. *See Housing America's Older Adults, supra,* at 12-14. The risk of having such conditions increases exponentially with advancing age. *See* David Marson & Charles Sabatino, *Financial Capacity in an Aging Society*, 36 J. of the Am. Soc. on Aging (Summer 2012), http://bit.ly/1moAJIL. For example, during 2017, "over one-quarter of adults went without some form of medical care due to an inability to pay." Fed. Reserve, *Report on the Economic Well-Being of U.S. Households in 2017* 23 (2018), https://bit.ly/2LoT78j.

For older Americans the equity their homes is often the principal economic asset needed to sustain them for the rest of their lives. If suffering final state action seizing their equity in a property tax foreclosure, they should not have to endure the added expense and delay of state court litigation to "ripen" Fifth Amendment claims already fit for federal court review.

CONCLUSION

For all these reasons, amici respectfully submit that the *Williamson County* doctrine should be overturned.

Respectfully Submitted,

JULIE NEPVEU *
WILLIAM ALVARADO RIVERA
**Counsel of Record*

AARP FOUNDATION LITIGATION
601 E Street, NW
Washington, DC 20049
Tel. (202) 434-2075
jnepveu@aarp.org

Counsel for Amici Curiae